

LAKE COUNTY BOARD of ADJUSTMENT
May 11, 2011
Meeting Minutes

MEMBERS PRESENT: Clarence Brazil, Mike Marchetti, Tim McGinnis, Paul Grinde

STAFF PRESENT: Joel Nelson, LaDana Hintz, Lita Fonda

Mike Marchetti called the meeting to order at 4:01 pm. He announced that the Vandal variance request had been withdrawn and was not on the agenda.

Motion made by Paul Grinde, and seconded by Mike Marchetti, to approve the April 13, 2011 meeting minutes. Vote 2 in favor (Paul Grinde and Mike Marchetti) and 2 abstained (Tim McGinnis and Clarence Brazil) to approve minutes.

Joel reminded those in attendance to please silence wireless devices during the meeting.

LAKE MARY RONAN LODGE & RESORT DENSITY VARIANCE

Joel Nelson presented the staff report. (See attachments to minutes in the May 2011 meeting file for staff report.)

Regarding the list of potential units and photographs, the cabin in photo #5 was not on the DEQ approved lot layout, so was an illegal structure. The laundry building in photo #7 has no indication of plumbing in the DOR records, but given it was a laundry building, it probably had a water connection, and was not on the DEQ approved lot layout and was not permitted to be connected to a sewer system. Photographs #9 through #14 were not in the DOR records, because they were basically personal property RV's and the like. He thought some of these were in the tax rolls. He noted with photo #14, the staff report erroneously referred to this as a unit. The applicants' agent said today they didn't want to use that as a unit. It was likely not connected to water and/or sewer. For photo #16, this was the owners' single-family residence, built in 2005. It was not in the [2005] records submitted, as it was under construction. On photo #17, this mobile home was supposed to be removed from the property according to the Environmental Health Department change of use permit, when they got the septic permit for the single family residence built in 2005.

On pg. 17 on the third line from the top, 'not' was removed. On pg. 18, Joel noted the storage building in photo #14 should not be a unit since there was no proof it was connected to water or sewer. The applicant had indicated they withdrew that unit from consideration. On pg. 19 in #14 on the third line, 'four' was changed to 'three'. He noted that two additional public comments were received today. Those were handed out (see attachments to minutes in the May 2011 meeting file) and presented to the Board. On pg. 23, for condition #26, he noted the agent would clarify when the agent spoke.

Tim asked for clarification on #16 on pg. 19, and Joel provided it. Tim thought that this was important, and it had been put down twice as #20 and #23. He checked that this was

saying if the variance was granted, the proposal then had to go through subdivision review. Joel outlined briefly what was involved in a subdivision review, at Tim's request. The preapplication process was already done. It had been discussed that there were too many units shown in the preapplication. The applicants had a list of what they need to submit with an application. If they received approval of the variance, they would have to present a preliminary plat application, and address county road standards. There could be variances required to road standards, and that would be addressed through the preliminary plat process. Tim checked that the County road standards would be addressed, and Joel confirmed. Tim also checked that it was common for the Planning Board to make suggestions as far as vegetative buffers and screens and so forth. Joel affirmed. In the 2010 subdivision regulations, there were requirements for buffers in commercial facilities. Tim checked that sanitation would be part of the DEQ review. Joel replied they would take public comments regarding water and sewer information, which would be forwarded to DEQ.

Marc Carstens spoke on behalf of the applicants. He outlined some background on the project. They wrote letters in March to people who expressed interest in being notified of activity happening in the Lake Mary Ronan area. They got a couple of responses, which were that the people weren't there in March and would be back in April, and they have not been contacted since then. He extended an open door policy to the neighborhood. They would be happy to conduct meetings both through the subdivision review process and independent of the review process to work on this matter. He thought there was some confusion, where they'd been asked to develop a conceptual plan, which they did. It wasn't reflective of what was on the ground. It reflected where they wanted to go through the review process. Just one question of subdivision review was density, which was the one that this Board dealt with, and this was where they were starting. They hoped to be able to have the density at the end of the meeting and be able to talk more firmly about planning and how to utilize it.

Marc continued that the comments that he'd made, especially dealing with improvements was basically site-specific. There was still quite a bit of work to do. They were here today to ask about clarification on the matter of density. He offered to answer questions. Pertaining to the remainder unit that Joel spoke about, a remainder unit was probably a misnomer on his part. Marc said he probably shouldn't have called it a unit. He was writing about other units at the time. The remainder area was an area in which they didn't want to propose a development on at this time. It was still an area, and had use for the population of the park to be used as a walking path, etc. He'd like to be able to call it a remainder. It was not to be a lot to have an RV or home or development on it, but he'd prefer not to attach that large portion of the area to a single RV unit or one of the commercial activities. They'd like it to stand alone. Other than that, the developer was in accord with what staff discovered.

Mike asked Joel on the calculation of density. Joel said this was 19.02, the total acreage, divided by the number of units. Clarence checked that this included the remainder in the calculation. Joel said it did. Mike asked if a future proposed development asked to use the remainder area for future development, how then would the density be calculated.

Joel said you'd recalculate the density, and then would need another variance, unless the density changed or the zoning changed.

Mike outlined that public comment would be limited to 3 minutes, since there were a lot of folks attending. He stated that if a previous speaker already made your point, please avoid rehashing that point. He encouraged people to the Board new ideas and comments so that the Board could get the full scope of what people were trying to tell the Board.

Public comment opened:

Sherry Curtis: She and her husband Wade owned the property on the NW edge of the proposed project. They owned 3 lots of the Eastman Villa subdivision. She asked about the reference to the lodge property as a 19.2-acre property. She thought if you went back to tax rolls, it was actually a 16.582-acre property for lot 10. She thought they'd included 1.98 acres of common area. This would change the density. She asked about 3 parcels that were referred to on the map as motel units. What comprised a motel unit? Would it eventually be a motel? Was it just a unit? Was it a place for a private home? It was referred to in several places. Were there units within a motel unit? Her other concern involved park models. With density, right now, in the winter there were very few people at the lodge as far as campers or whatever. It gave the lake a time to rest. Would people in park models be allowed to live there on their purchased property year-round? What kind of density and impact on the lake were 37-units year-round going to make?

James Baker: He was a native Montanan and spent summers at Lake Mary Ronan when growing up. He'd seen Montana being eaten up with purchase of land and subdividing it repeatedly. He did hand it to this proposal. It was the best one he'd seen for up there. The business couldn't make it if they just leased it like they were doing. If you broke it up and sold it, and then handled commercial property to store the RV's and jet skis, it was a beautiful plan, but the reality was they'd end up with a trailer park right next door. He lived next to Sherry, two houses away. He believed his welfare and property value would go down. He believed his health would be influenced by the dust, traffic and noise pollution on the road. The kids ran their vehicles up and down the road, which was about 8/10 of a mile. He thought it was a fire hazard waiting to happen, with trailers crammed next to each other. The volunteer fire department a mile away wasn't going to get there in time. He was in opposition. He thought it would be fair to everyone involved to stick to the density requirements. Let them subdivide it into 2.5-acre plots. If the whole thing was 16 acres or 19 acres, were they talking about putting this on half of that? The density could be as low as 0.2 or 0.1. When you got to the trailer parks, it was even less than that.

Ray Folwell: He owned the property on both sides of the road as you approached the lodge. There were only prescriptive rights on the road through his property. It wasn't a county road with a county right-of-way. This was well documented. He described letters sent regarding the documentation. The driving surface through their property was 16 feet at some points. Today trucks actually had to stop as they were passing one another. He referred to the subdivision regulations adopted on 7/1/10 that primary subdivision access road shall be designed according to these regulations for the purpose of safe travel and

durable construction. The road didn't meet that, with the prescriptive rights that he and his wife held.

Tim McGinnis: He highlighted that what the Board was looking at here was the variance. If it passed here and went to subdivision review, then those comments would be very, very relevant.

Ray F: He realized that. He was just trying to save some people a lot of trouble.

Tim McGinnis: They had to follow the rules of the State of MT.

Bob Hanson: He lived past the lodge at Lake Mary Ronan. His concern was not so much the design. Density was a problem, but that was a problem for the County to grapple with. His problem was during the summers, kids and adults raced ATV that were unlicensed for road use, and during the winter, snowmobiles, at breakneck speed. Some of them who live up there were getting very tired of telling people to knock it off and go away. He also got tired of making that type of complaint to the County and having it ignored. The fact that the road was in terrible shape was another whole issue. He would be opposed to something like this that would increase the density unless something was done to police the area so this activity could not continue to occur, or if you complained about it to the police, they'd do something about the people that were doing it. He and several neighbors had gone out and stopped these kids and even adults. It was a county road, not a racetrack or those people's private dune buggy strip. Beyond that, the County should take into consideration bring the road up to standards and make it so it's durable. It was fine up to the lodge, and right there it turned into something that looked like something out of World War I. Past that, it got moderately better up to the end of the county road.

Jim Grant: He spoke for he and his wife Ann. He asked for clarification on the motel units, which Sherry also asked about. Regarding the Density Regulations, pg. 12, section 8, paragraph 2 referred to what was on the tax rolls, and adopting a higher density. Paragraph 1 listed 3 requirements that needed to be met. Did those requirements still need to be met? He wanted to find out if the tax roll thing was in lieu of those 3 requirements. He supported the lodge remaining a lodge. At the same time, he understood what the rest of the people were saying, and their concerns. His main concern was the lake itself. He hoped some modifications and adjustments could be made to make this a win-win situation for all: the residents, the public, the owners, and the lake. The EPA and DEQ assessed the lake approximately every two years. Right now, the terminology used for the lake in terms of fisheries and aquatic life was 'threatened'. Threatened was not supporting. When he called them, they said that meant additional nutrients in the lake would make it a non-fishery. He'd seen a lot of change at the lake since he'd been going up there for years. In the last few years it had really changed, with algae and everything. That was a primary consideration showing the lake was dying. He talked to the EPA, and he reported they were surprised there was further development on the lake until the water quality was raised up. He found it a major concern with any density or project or operation around that lake. If this wasn't taken into consideration, it

would be a lose-lose situation. They would all lose. He mentioned the EPA water quality information could be viewed on line and was available.

Gene Garrison: He had a small campground one mile from the lodge. A few years ago he broke off a couple of lots from his campground which was know as Mountain Meadows Resort. Some people were here in support of the current operation to be successful and some obviously were not. Both sides were against his place, to break off 3 lots. In his situation, he reduced the impact on the lake probably 70%. Maybe that would offset some of the alleged contamination of the lake that may or may not occur as a result of this subdivision. There were a few issues. With the park models, most people owned them, from what he understood. Most people who owned their property, took better care of it than it would be maintained if it were just a plain camping spot. He had 10 places on his campground with full-time residents, summertime, and they made a conscientious effort to make the place better. The quality of the land was better and there was less garbage and so on. He thought those park models would offset fears. He didn't know how many campsites would be left over after that. He just had a quick glance at the report. One of his main concerns was like the gentleman said a few moments ago, about the lake, the roadway, septic and water. His belief was that in spite of everyone opposing him when he tried to do his, change was inevitable, whether it was us, them, him or someone else. It would happen sometime. If they did what they were doing properly, then it should go ahead. If the main concerns—the road, the lots, the water and so on—if those things were met totally, he wouldn't be opposed. He would be watching. He appreciated what they'd done, and the some of the comments, particularly MJ Snyder.

Joan Folwell: She and her husband owned the property at the entrance of Lake Mary Ronan. They replied to Marc Carstens' letter. They felt, like him, that the lake was a very special place. For once, she wished a developer would come along with a project that recognized that, instead of trying to put as much stuff on a piece of property to presumably line their own pockets rather than respect the lake and what it had to offer. She said the request for the variance didn't serve the purposes of the Lake County Growth Policy or the Density Map and Regulations. Specifically it did nothing to help maintain the rural character of the ag and timberland, and it did nothing to protect the important wildlife habitat, water quality, and natural resources of this County. The purpose of a variance was to ensure that the land didn't lie idle, to the benefit of the community or to the property owner. In it's current state, this land wasn't lying idle and the owner or purchaser had the option to pursue things that didn't require a variance. The negative responses of the community members here showed that there was a lack of benefit to them. In granting the variance, none of the occasions for the variance or reasons for granting a variance would be fulfilled. It would be contrary to public health and welfare because of the increase in the number of people that would come to a wonderful place like that and have an opportunity to buy little pieces of it. The added population would increase the traffic on the lake, the motor activity and pollution unless attention was placed on sewerage and other health issues like that. She objected to the method used to count units. She referred to the staff report that there was no evidence for 37 RV units on Oct. 1, 2005. The only reference to them was a notation in the DOR general building data ledger for 37 units. In her case they applied for and were granted a

septic permit in 1967 or 1996. Reality did not set in until 2009. Finally, she objected to the application requesting higher density because the applicants had not even utilized all the property currently at their disposal.

Public comment closed.

Mike returned to Marc Carstens to respond about the definition of a motel unit. Marc described that a key piece of information they used to help rely on the existing established density was the licenses in place through the Dept. of Environmental Quality (DEQ) and on file in the courthouse. One of licenses was for 39 RV units. The motel units came from a license that would allow different cabins to be rented out. They rented a number of cabins, and he understood that they also had some rooms above the lodge. They had some mobile homes and different things that they rented out on a regular basis. In order to have the license to do that, they were operating under a motel unit license. That's where he came up with that term. Tim asked if this was a single occupancy, so it would be 4 individual motel units, like one, two, three and four. Marc said they determined that the motel unit, and the term motel, gave a licensed procedure to rent rooms to the public. What did that mean? They went out to the field and looked at the units in place on the ground, and they looked at the tax and sanitation records to determine the unit. They realized those motel units on file were used as a licensing mechanism to rent rooms to people, and indicated the units in the field and on the tax roll.

Early on, Marc used motel unit because that was what it said on the license. Actually it should have been just the structural unit, as per the density regulations definition. They looked at the motel units to realize there were in fact unit structures out there under the definition of the Density Regulations. That was the mechanism for their allowance to be there and to be legal. As it sat, it could continue to go on just like it was. What they proposed didn't change any of the density units. They were here today to acknowledge density units in light of regulation. Tim thought the question was to make sure a unit was defined as a [inaudible] having water going to it. He thought [the [person who asked the question] was concerned to check that a unit was not 20 rooms. Marc said they weren't saying that a motel unit could have 15 or 20 rooms. He understood that there was a motel license with a number of rooms. They were basically going to the unit count, realizing that their ability to legally use those unit counts in the field was in fact motel license.

Tim mentioned someone else brought up occupancy. He confirmed with Marc that occupancy could be year-round.

Marc thought one point to clearly understand was that they were trying to take a situation that existed today, with its existing densities, sewers and land use, and to put that through today's subdivision regulations. Those regulations would cause completely new drainfields, and the abandonment of the use by the developer of the land from the county road to the water's edge—those buildings in there now would have to come out in order to come through today's review. Today's review would reduce the impacts on the lake that could exist if they did nothing. It would cause them to look at the surfacing of the roadways within this development, and surface water runoff. It would put today's

development under a microscopic light in order to go through subdivision review. It wasn't taking a vacant 19-acre piece of ground and imposing this usage on top of it. They were trying to take this usage that was on top of this ground and put it through today's standards for review. Those standards would do a better job of monitoring the lake quality and dust abatement than if left alone. The new review would be more stringent. He thought as they went through the subdivision review process, they would be able to see this happen.

Mike asked about the comment that the tax records currently gave approval for 39 RV units. Marc said that was from DEQ. Joel said they counted what was on-site as well.

Mike reopened public comment, briefly, to give a chance for response to Marc's review.

Public comment reopened:

Joan Folwell: She asked if the staff came up with the campground trailer report licensing records, why hadn't those been put forth? There was deduction from records. Wouldn't the campground licensing records have a more accurate account of what had been happening on a two-year basis? They started coming to the lodge in 1970. They bought property in 1974. She had never seen the existence or even preparation for 37 or 39 RV sites. She wondered why those licenses hadn't been put forth to add to the weight of the DOE and the tax rolls or whatever other proof there was.

Shannon Palmer: She lived up at the lake. Her most important question was regarding the 2.5-acre per unit density. This was found to be an appropriate density designation to adequately protect the important wildlife and water quality, and the natural resources of Lake County as a whole. It seemed this area could still be developed in an appropriate way under the existing zoning regulations. She had questions about whether this really conformed to the zoning regulations as they existed. She would like to see that criteria being met, rather than reducing that or changing that to what this proposal proposed. The lake was important to all of them. Even though she certainly thought Meg and Mike had the right thing in mind, the fact was it would bring more commercial activity to the lake, even though it said in the report that it wouldn't. If you'd been up there, she thought you could see that it would definitely be a big change, and certainly not for the better as far as increasing the density. She'd like it to stay. It seemed like the zoning regulations were determined for a reason. One of the arguments was the neighborhoods in the surrounding areas had a smaller density. Those were done before the Density Regulations came into effect. If very development that came by that asked for a density change, would that be determined by the density that was already in existence or by the homes that were built before the Density Regulations came into effect. This was something to think about.

Public comment closed.

Clarence said they'd want to withhold that other property that wasn't developed. This request was based on inclusion of that property. If the Board approved this, that property should be included in this. Otherwise they could do something with that in the future.

Tim said they would have to come back to get another variance if they wanted to do something there, since it would be increasing the density of the project. Clarence thought they should specifically indicate that it couldn't be used in the future. Mike summarized that this would be so the remainder area would be barred from future development. Clarence affirmed. He thought they should specifically state that. Joel noted they'd have to come back to this Board to get that changed. Clarence thought they should stipulate that it couldn't be changed. He saw that this went on all the time, when he was on the Planning Board. People would set aside land for a cluster development and then come back wanting to develop it. Joel understood. He explained that if you put a perpetual condition like that on it, the process to undo that would be to come back to this Board, which they would have to do anyway, if they wanted to do that. Paul thought it was way too early in the process for something like that. This was absolutely preliminary. Clarence asked what they normally did with a cluster development, when an amount of land was set aside. Joel said that was usually in the Density Regulations, that it would have to be a stipulation of the subdivision approval. They would actually need a variance when they came in to develop it later. Clarence said however they needed to do it, he thought they should put something in there. Joel thought it was done, if they approved this request.

Tim said while he appreciated the comments from the people who showed up and he understood their concerns for the project, his feeling on this was that the scope of work for this Board was to determine variance, which didn't have anything to do with the subdivision. Those issues would be covered later on. He agreed with staff that the owner had the entitlements in place because those units existed before the Density Map was there. There was a lot of precedent for that. He was comfortable with the staff's assessment of how many units were there. He was in favor of this variance, with the idea in mind that he had no opinion about the subdivision, what it should look like, how bad the roads were, none of that. He thought legally the precedent was there for the owner having those units in place, and he was comfortable with the staff's assessment of how many units there were.

Mike said he almost agreed with Tim. On the staff assessment part, he thought they'd done a very good job of defining what buildings were there, but the Board had three things that they were here to do. Was this variance contrary to the public interest or not? Would it enforce a hardship on the owners, and was it in the spirit of the ordinance of this particular density regulation? On two of those points, contrary to the public interest, he thought they'd heard from the public and he thought right now that they were contrary if they were to grant this. Was this a hardship if the Board denied this? He didn't believe it was a hardship if they denied this variance. As for the spirit of the ordinance, he didn't know how to interpret that one.

Tim thought Mike was defining 'public' too narrowly. He thought the public would be all of Lake County. He disagreed in that he thought [inaudible] members of the public that live in Lake County would very much appreciate a place to purchase on Lake Mary Ronan. He thought that also served the public interest, as well as having a facility there to service the public on Lake Mary Ronan.

Mike said he understood Tim's point. He disagreed with it. He thought the greater weight of the public interest was on those who had adjoining property. He thought this would affect them more than it would affect him on the East Lakeshore. He would be dead set against someone doing this on the property across the street from him. He was still having a hard time with this one.

Clarence said it certainly wouldn't affect him on Finley Point. Tim agreed with that, and that it had to be weighted. He just was weighting things differently.

Paul thought if the density variance was granted, as it went through the process it could change a lot, since it was very preliminary. Obviously, the roads had to get better. The septic systems had to be modern, the best you could buy, which would be a lot. He thought as far as protecting the lake, it was a good proposal.

Clarence mentioned he was on the Planning Board for a number of years. The Planning Board would really get into this. They would get into the protection of the lake and the roads. They would make this a changed thing by the time they were done with this.

Tim pointed out that from the four violations that seemed to be there now, hopefully the new owner would be a better steward of the land as well.

Motion made by Mike Marchetti to not approve the density variance as requested, and that they go with the findings of fact for not approving. Motion died for lack of second.

Motion made by Tim McGinnis, and seconded by Paul Grinde, to grant the variance from the Density Map and Regulations to allow the subdivision to proceed along with the findings of fact and the staff report and impose the recommended staff conditions. Motion carried, 3 in favor (Paul Grinde, Tim McGinnis, Clarence Brazil) and 1 opposed (Mike Marchetti).

Clarence asked the person with concerns on police response if a sheriff's officer still lived in the vicinity. He responded that the officer moved to Alaska. He was usually out on the road anyway.

VANDAL VARIANCE: WITHDRAWN

OTHER BUSINESS

None

Mike Marchetti, chairman, adjourned the meeting at 5:38 pm.